19.42. K **File No.** O. Finance/42

Legal **DEPARTMENT**

A. **BRANCH**

P 9 (E)

Subject:—Opinion under the Bombay Finance Act. 1932.

File No. O. Finance/42.

Std. Sectt. Slip 24 B c.

452/A.

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Office of the R.L.A.

The question for consideration of the R.L.A. is whether the claim of the proprietor of the Mallikarjun Cinema, Hubli for refund of the electricity duty recovered from him for the period from May 1936 to Agust 1938 under the Bombay Finance Act, 1932 is legally admissible; and if so, what is the period of limitation?

A payment made under a mistake of law and not a mistake of fact cannot be recovered provided the payment is made voluntarily and not under duress (I.L.R. 52; Mad.12; R.L.A's opinions No.3326, dated 7th June 1934 and No.4588, dated 20th May 1938). It is true that the payment in the present case was made under a mistake of law; but it is not known whether it was made voluntarily and not under duress. If it is the case that the payment was made voluntarily and not under duress, no recovery can be claimed from Government irrespective of the question of limitation. But if the payment was made under protest the proper Article applicable would be Article 16 ~~of~~ in the First Schedule to the Limitation Act, in which case the claim is clearly time-barred. In any case therefore refund is not legally admissible.

Sd. P.N.Moos,
1/8.
Remembrancer of Legal Affairs.

U.R.to H.D.,No.6304, dated the 3rd August 1942.

MRP.
1/5/56.

Office of the R.L.A.

The method of assessment suggested by the Electrical Engineer to Government at p.3 ante is arbitrary and is not warranted by either the provisions of the Act or of the Rules thereunder. It would not be lawful to assess the duty leviable during the period from 1932-1939 on the basis of the monthly average of the next three months' actual consumption of energy. Government should, therefore, write off the arrears as suggested by the Commissioner in his endorsement at p.7 ante unless the licensee is willing to pay a reasonable amount by way of amicable settlement.

Sd. P.N.Moos,
30/9
Remembrancer of Legal Affairs.

U.R.to R.D.,No.7952, dated the 1st October 1942.

HDP.
1/5/56.

Office of the R.L.A.

The view expressed in paragraph 5 of F.D. office note at page 55 ante is correct.

2. Probably the object in view could be achieved by gradually changing the dates of readings of selected consumers in such a way that at no time is there a serious reduction or increase in the "month" referred to in Rule 8(1). In respect of every two consecutive readings there could be a reasonable difference of say 2 or 3 days either way i.e. by increase or by decrease; but of course this cannot be stretched to include periods as short as 15 days or as long as 45 days with a view to effecting a sudden change in the method of reading meters.

Sd. P.V.Moos, 7/10.
Remembrancer of Legal Affairs.

"A" to R.D., No.3167, dated the 8th October 1942.

MRP.
1/5/56.

Submitted.

Attention is invited to the notes of the Secy.R.D. dated 4-9-42 and 9-9-42. The question raised ror the R.L.A's consideration is whether rule (1) as proposed at p.13 and rule (2) as proposed at p.17 are legally in order.

2. By R.D. notification No.1031/39 dated 29-1-1942, issued under section 29(2) of the Bom. Finance Act, 1932, Government allowed to the Municipalities and notified Area Committee mentioned therein rebate on account of the cost of collection of the Urban Immoveable Property tax, at the rates shown against them on the estimated demand for the years 1939-40, 1940-41 and 1941-1942. As the said notifn. dated 29th January 1942 provided for payment of re bate to the Municipalities and notified Area Committees mentioned therein for the cost of collection of the U.I.P. Tax for the years 1939-40, 1940-41, 1941-42, that notification ceased to have effect at the end of the year 1941-42. Rule (1) at p.13 ante appears to be in order (vide section 25 read with sect.29(2)(b) of the Act). It appears that rule (2) as proposed at p.17 ante would be in order and would be covered by clauses (b) and (e) of sect. 29(2) of the Act.

S.A.S.

x x x (see overleaf)

A.L.R.

Id.R.T.K. 1/10.

Id. P.S.H. 3/10.

R.L.A.

P.T.O.

Office of the R.L.A.

Draft rules (1) and (2) at pages 13 and 17 respectively are in order. They will be subject to the condition of previous publication.

Sd. P.N.Moos
11/10
Remembrancer of Legal Affairs.

U.R.to R.D.,No.8324, dated 15th October 1942.

MRP.
1/5/56.

Electricity Duty.
Meter reading.
Change in system of, for calculating.

GOVERNMENT OF BOMBAY.
Revenue Department.
Resolution No.8836/28.

Bombay Castle, 22nd December 1942.

Letter from the Association of Electrical Undertakings, Bombay Province, No.EG/35/298, dated the 14th April 1942:-

Government reference dated the 11th May 1942 to the Electrical Engineer to Government.

Memorandum from the Electrical Engineer to Government, No.G.110/659, dated the 23rd May 1942.

Government reference dated the 1st July 1942 to the Electrical Engineer to Government.

Memorandum from the Electrical Engineer to Government, No.G.110/1139, dated the 4th July 1942.

Government letter, No.8836/E/28, dated the 20th August 1942, to the Association of Electrical Undertakings.

Letter from the Association of Electrical Undertakings No.EG/35/425, dated the 31st August 1942.

Government reference dated the 24th September 1942 to the Remembrancer of Legal Affairs.

Memorandum from the Remembrancer of Legal Affairs, No.8167, dated the 8th October 1942:-

* * * * *

"2. Probably the object in view could be achieved by gradually changing the dates of readings of selected consumers in such a way that at no time there is a serious reduction or increase in the "month", referred to in Rule 8(1). In respect of every two consecutive readings there could be a reasonable difference of say 2 or 3 days either way,i.e. by increasing or by decrease; but of course this cannot be stretched to include periods as short as 15 days or as long as 45 days with a view to effecting a sudden change in the method of reading meters."

RESOLUTION.- Government concurs in the opinion expressed by the Remembrancer of Legal Affairs. Copies of that opinion should be forwarded to the officers concerned for information and guidance.

By order of the Governor of Bombay.

Sd. M.J.Desai,
Secretary to Government.

G.R.,No.8836/28, R.D.,dated the 22nd December 1942.

*Typed as an accompaniment to this resolution.

MRP.
14/5/56.

To

The Commissioner, N.D.,
The Commissioner, C.D.,
The Commissioner, S.D.,
The Collector of Bombay,
All other Collectors,
The Executive Engineer, Electrical Division and
Electrical Inspector, Bombay.
The Electrical Engineer to Government,
The Remembrancer of Legal Affairs,
The Accountant General,
The Public Works Department,
The Finance Department.

No. of 1942.

Copy forwarded for information and guidance to

Accompaniment to Government Resolution, Revenue Department, No.8836/28, dated the ~~22~~ 22nd December 1942.

Letter from the Chairman, The Association of Electrical Undertakings, Bombay Province, Ref.No.EG/35/298, dated the 14th April 1942.

The Bombay Electric Supply and Tramways Company, Limited, a member of this Association, has approached us on the subject of the collection of Electricity Duty should a change be made from the existing system of reading meters to the system of "continuous meter reading". This letter is the most economical arrangement for a large undertaking. It will be appreciated that both systems provide for the regular reading of each meter, but during the transition from one to the other practically every meter will be involved in a billing period of less or more than a month.

We would emphasise that the change-over only affect the meter readings for one period, thereafter normal monthly readings being resumed.

Messrs. The Bombay Electric Supply and Tramways Company, Limited, have sent us copies of their correspondence on the subject with the Collector of Bombay ending with his No.ETC.21 dated ~~2~~ 30th January 1942.

From this correspondence it would appear that Government feel that no change, as now proposed, can be introduced until the Electricity Duty Act is altered.

I am instructed by the Council of this Association to state that it is possible for a change like this to be introduced without affecting the amount of tax collected, and, in fact, two Companies in this Presidency have already brought about this change without incurring any criticism from Government.

My Council have the honour to enquire whether Government, on reconsideration, still deem it necessary to alter the Electricity Duty Act in such a way as to render it possible for a Company to introduce the manifest advantages of continuous meter reading, without departing from the strict letter of the Act, and, if so, whether they (the Government) would kindly take the matter in hand as early as possible.

Frankly speaking, this Association considers that the matter is really so trivial as to make it not worth while for Government to take the trouble of re-drafting any portion of the Act. Government must be aware that Companies continually assess the incidence of taxation where they have to deal with premises which are shut up or where consumers are connected or disconnected, leaving intervals of less or more than a month to be metered.

The usual method of assessing the tax is to pro rata the actual consumption to determine whether the rate of consumption was more than 12 units or not per month, and apply the tax accordingly.

I am also instructed to state that should you desire to discuss the matter a representative of the Association will be glad to call upon you by appointment.

No. of 1943.

Copy forwarded for information and guidance to -

MRP. -
14/5/56.